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8	BEFORE THE BOARD OF REGISTERED NURSING
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
10	•
11-	In the Matter of the Statement of Issues Case No. 2013-444
12	Against:
13	ANDREW JOHN MLAKAR, AKA ANDREW MLAKAR STATEMENT OF ISSUES
14	Registered Nurse License Applicant
15	Respondent.
16	
17	Louise R. Bailey, M.Ed., R.N. ("Complainant") alleges:
18	<u>PARTIES</u>
19	1. Complainant brings this Statement of Issues solely in her official capacity as the
20	Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs (the
21	"Board").
22	Application History
23	2. In or around December 2011 the Board received an application for a Registered
24	Nurse License from Andrew John Mlakar, also known as Andrew Mlakar ("Respondent"). On or
25	about November 22, 2011, Respondent certified under penalty of perjury to the truthfulness of all
26	statements, answers, and representations in the application.
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JURISDICTION

- 3. Pursuant to Business and Professions Code ("Code") section 485, subdivision (b), on or about May 14, 2012, the Board denied Respondent's application and he was notified of the right to a hearing to appeal the denial.
- 4. On or about July 9, 2012, Respondent requested a hearing to appeal the denial of his application.

STATUTORY PROVISIONS

- 5. Code section 2736 provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under Code section 480.
 - 6. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for the following:

- (f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.
- 7. Code section 480 states, in pertinent part:
- (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:
- (1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.
- (2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.
- (3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.
- (B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

21.22.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Conviction of a Crime)

8. Respondent's application is subject to denial under Code sections 2761, subdivision (f), and 480, subdivision (a)(1), in that on or about October 3, 2006, in the case of State of Nevada v. Andrew John Mlakar (Justice Court of Reno Township, County of Washoe, State of Nevada, 2006, Case No. RCR 2006-026927), Respondent was convicted by the court on his plea of guilty for violating NRS 205.300 (embezzlement), a misdemeanor, a crime that is substantially related to the qualifications, functions, or duties of a licensed registered nurse. However, on October 25, 2006, upon proof that Respondent had paid restitution in the amount of \$20,307.45, the embezzlement charge was amended to reflect a charge of NRS 199.280(2) (obstructing a public officer), a misdemeanor.

The circumstances of the crime are that between in or around December 14, 2005, to January 30, 2006, while employed by Recreational Equipment Industries ("R.E.I."), Respondent committed criminal acts including, but not limited to: taking money from R.E.I.'s cash register; and, completing and signing return slips for R.E.I. merchandise using the name of R.E.I. members who had not purchased that merchandise, and then issuing and using R.E.I. gift cards gained thereby to purchase R.E.I. merchandise for his own use. The amount of the loss by R.E.I due to Respondent's actions was over \$17,000.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Committed Acts Which If Done By a Licentiate)

9. Respondent's application is subject to denial under Code section 480, subdivision (a)(3)(A), in that he committed acts which if done by a licentiate of the profession would constitute grounds for discipline under Code sections 2761, subdivision (f) (conviction of a crime substantially related to the qualifications, functions or duties of a license holder), as more fully set forth in paragraph 8, above.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Dishonest, Fraudulent, or Deceitful Act)

10. Respondent's application is subject to denial under Code section 480, subdivision (a)(2), in that he committed dishonest, fraudulent or deceitful acts with the intent to substantially benefit himself, as set forth in paragraph 8, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 1. Denying the application of Andrew John Mlakar, also known as Andrew Mlakar, for a Registered Nurse License; and,
 - 2. Taking such other and further action as deemed necessary and proper.

DATED: Necember 3, 2012 Joseph

LOUISE R. BAILEY, M.ED., R.M.

Executive Officer

Board of Registered Nursing

Department of Consumer Affairs

State of California

Complainant

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